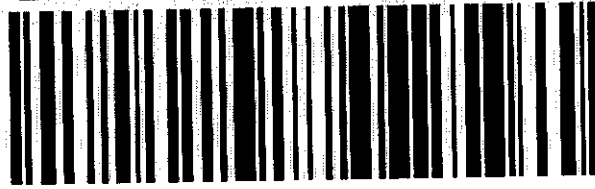
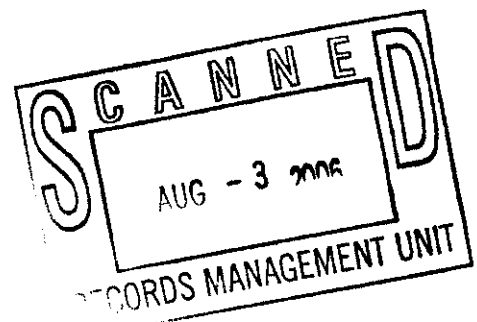


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STATE OF NEW JERSEY BOARD OF PHARMACY
 DEPARTMENT OF LAW & PUBLIC SAFETY
 DIVISION OF CONSUMER AFFAIRS
 STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION
 OR REVOCATION OF THE LICENSE OF
 AND THE PERMIT OF

RUSSELL ROSEN, R.P.
 License No. 17278

and

UNION HILL PHARMACY
 Permit No. RS04113

TO PRACTICE PHARMACY
 IN THE STATE OF NEW JERSEY

Administrative Action

FINAL DECISION AND ORDER
 AFTER HEARING

This matter was opened to the New Jersey State Board of Pharmacy (hereinafter the "Board") on the complaint by the Attorney General (hereinafter "Complainant") against respondent Russell Rosen (hereinafter "Respondent") filed on September 17, 1998. By that five count Complaint the Attorney General charges that on four separate occasions, on June 11, 1997, August 14, 1997, January 9, 1998 and March 30, 1998, respondent Rosen failed to offer and/or give required verbal counseling to undercover representatives of the Enforcement Bureau presenting new prescriptions for filling, all in violation of N.J.S.A. 45:14-15.2(a) and (d), N.J.A.C. 13:39-7.14(e) 1 and 2, N.J.A.C. 13:39-7.14(j) and therefore providing basis for disciplinary sanctions pursuant to N.J.S.A. 45:1-21(h). The dispensing in these circumstance was also alleged to constitute repeated acts of negligence in violation of N.J.S.A. 45:1-21(d). With respect to one count (Count IV), the dispensing without specific counseling as to possible drug interactions was further alleged to constitute gross and repeated negligence, providing further basis for disciplinary action pursuant to N.J.S.A. 45:1-21(c) and (d). In the fifth count, it was alleged that respondent

failed to have a system in place to offer counseling to patients and/or care givers not physically present at the time of dispensing in violation of N.J.A.C. 13:39-7.14(e) 4 and N.J.S.A. 45:1-21(h).

On September 22, 1998, respondent submitted a letter responding to the charges in which he neither confirmed nor denied the charges because he had "no clear recollection of these specific instances." Notwithstanding his determination not to contest the charges, he asserted that it was "inconceivable" that he had not counseled on the dispensing that was the subject of Count III and that he did not believe that the incident occurred as described in Count IV. With regard to Count V, he acknowledged that he has since put in place a system for providing counseling for those who are not physically present. He asked the Board to consider his "fifteen years of faithful service" and reject the imposition of an active suspension of his license.

A mitigation hearing was held on October 27, 1999. Deputy Attorney General Hakima Bey-Lawson presented the matter on behalf of the Attorney General. Respondent appeared on his own behalf. The State introduced an affidavit of costs executed by Clinton Spaar, R.P. Respondent reiterated in his testimony that he could not contest the allegations of the complaint because he could not recall the specific instances. Nonetheless, respondent stated that his normal business practice was to offer and/or give counseling to each patient.

FINDING OF FACT

1. On four different dispensings—on June 11, 1997, August 14, 1997, January 9, 1998 and March 30, 1998—respondent failed to offer verbal counsel and/or to counsel when presented with new prescriptions.

2. On at least two of these occasions, the medications(Count III -- Prelone, intended for use by a seven year old child and Count IV -- the combination of Hismanal and Erythromycin dispensed "serially in close proximity") dispensed could have resulted in egregious harm to the patient if not properly counseled as to directions and possible interactions.

3. Respondent has now established an acceptable system for providing counseling for those who are not physically present.

CONCLUSIONS OF LAW

1. Respondent's failure to offer and/or give required verbal counseling upon the presentation of new prescriptions for filling constitutes a violation of N.J.S.A. 45:14-15.2(a) and (d), N.J.A.C. 13:39-7.14(e) 1 and 2, N.J.A.C. 13:39-7.14(j) and therefore provides basis for disciplinary sanctions pursuant to N.J.S.A. 45:1-21(h).

2. With respect to Count II (Coumadin) and Count III (Prelone, intended for use by a child) the dispensing of these medications without specific counseling constituted repeated negligence, providing further basis for disciplinary action pursuant to N.J.S.A. 45:1-21(d).

3. With respect to Count IV, the dispensing of Hismanal and Erythromycin on dates within close proximity, without specific counseling as to possible drug interactions constituted gross and repeated negligence, providing further basis for disciplinary action pursuant to N.J.S.A. 45:1-21(c) and (d).

Based on the foregoing:

IT IS on this 10 day of November, 1999,

ORDERED that:

1. Respondent shall pay to the Board of Pharmacy a civil penalty in the total amount of \$3500 for the violations as set forth in the Administrative Complaint and \$3644.50 in costs. Said payment shall be made by certified check or money order payable to the State Board of Pharmacy and shall be delivered within ten (10) days of the service of this Order to the Executive Director at the Board of Pharmacy, P.O.Box , Newark, New Jersey 07101. Failure to remit payment as required may result in the initiation of formal disciplinary proceedings and will result in the filing of a Certificate of Debt.


2. The license of respondent to engage in the practice of pharmacy shall be suspended for three (3) months from the date of the entry of this Order. One month of said suspension shall be active and two months shall be stayed. During the active suspension respondent shall cease and desist from engaging in the practice of pharmacy including the following: respondent shall not handle, order, inventory, compound, count, fill, refill or dispense any drug; he shall not handle anything requiring a prescription including devices and medications; he shall not handle prescriptions; he shall not advise or consult with patients, and he is prohibited from being present within a prescription filing area of pharmacy.

3. Prior to resuming active practice respondent shall submit documentation that he has satisfactorily completed a course in patient counseling.

4. Respondent shall cease and desist from engaging in any of the conduct found herein to be unlawful.

NEW JERSEY STATE BOARD OF PHARMACY

BY:


Richard A. Palombo, R.P.
Board President

Dated: